

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

LEROY DENEKE, ) Case No. 5:21-cv-5068  
Plaintiff, )  
v. )  
MENARD, INC., )  
Defendant. )

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant, Menard, Inc., (“Menard”) by and through Katelyn A. Cook of Gunderson, Palmer, Nelson and Ashmore, LLP, its attorneys, pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446, respectfully files this Notice of Removal, removing this action from the Seventh Judicial Circuit Court of Pennington County, South Dakota in which the action is now pending to the United States District Court for the District of South Dakota. In support of this Removal, Defendant Menard presents the following discussion of fact and legal argument.

**I. VENUE IS PROPER IN THIS DISTRICT.**

1. Plaintiff Leroy Deneke filed a Complaint against Defendant Menard in the Seventh

Judicial Circuit Court of Pennington County, South Dakota (the “State Court Action”). *See Exhibit 1.*

2. This Court is the proper venue because the United States District Court for the District of South Dakota, Western District, is the district court “embracing the place where the action is pending.” 28 U.S.C. § 1441(a).

**II. ATTACHMENTS.**

3. A true and correct copy of the docket sheet from the State Court Action is attached hereto as Exhibit 2. Pursuant to 28 U.S.C. § 1446(a), a legible copy of all process, pleadings, and orders filed of record in the State Court Action are attached hereto as Exhibit 3.

**III. THIS NOTICE OF REMOVAL IS TIMELY FILED.**

4. Defendant Menard was served with the Summons and Complaint on September 13, 2021.

5. This Notice of Removal is being filed within thirty (30) days after service on Defendant Mendard. Accordingly, this Notice of Removal is timely filed within the requirement of 28 U.S.C. § 1446(b).

**IV. SUBJECT MATTER JURISDICTION.**

6. This Court has original subject matter jurisdiction over this action pursuant to the diversity jurisdiction statute codified at 28 U.S.C. § 1332, which provides, in part, that the “district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different states.” 28 U.S.C. § 1332(a)(1).

**A. Diversity of Citizenship.**

7. Plaintiff Deneke is resident of Pennington County, South Dakota. *See* Exhibit 1, Complaint at ¶ 1.

8. Defendant Menard is a Wisconsin corporation with its principal place of business in Eau Claire, Wisconsin. *See* Exhibit 4, Wisconsin Department of Financial Institutions; *see also* Exhibit 1, Complaint at ¶ 2.

9. Accordingly, there is complete diversity of citizenship in this matter because the Plaintiff (a South Dakota resident) and Defendant Menard (a Wisconsin corporation) are citizens of different states.

**B. Amount in Controversy is Met.**

10. Pursuant to 28 U.S.C. § 1446(c), the sum demanded in the initial pleading is deemed the amount in controversy. The United States Supreme Court has explained that “[t]he general federal rule has long been to decide what the amount in controversy is from the complaint itself, unless it appears or is in some way shown that the amount stated in the complaint is not claimed ‘in good faith.’” *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353 (1961); *Larkin v. Brown*, 41 F.3d 387, 388 (8th Cir. 1994) (jurisdictional amount in controversy requirement satisfied by complaint that in good faith alleges damages exceeding jurisdictional amount).

11. As expressly set forth the Plaintiff’s Complaint, the amount in controversy in this matter exceeds the sum of \$75,000, meeting the requirements of 28 U.S.C. § 1332(a). The Complaint alleges negligence and states that Plaintiff has already incurred One Hundred Eighty Eight Thousand, One Hundred Twenty-Eight and 19/100 Dollars in damages. Thus, the amount in controversy is plainly \$188,128.19, a sum which greatly exceeds \$75,000.00. The amount in controversy requirement is easily met on the face of the Plaintiff’s Complaint.

**V. THE OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED.**

12. A Notice of Filing Notice of Removal, with a copy of this Notice of Removal attached, will promptly be filed with the Clerk of the Seventh Judicial Circuit Court of Pennington County, South Dakota.

13. Written notice of the filing of this Notice of Removal will be given to Plaintiff as required by law.

14. The allegations of this Notice of Removal are true and correct and this cause is within the jurisdiction of the United States District Court for the District of South Dakota.

15. If any question arises as to the propriety of the removal of this civil action, Defendant Menard requests the opportunity to present a brief in support of its position that this civil action is removable to this Court.

Dated: October 13, 2021.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: /s/ Katelyn A. Cook  
Katelyn A. Cook  
*Attorneys for Defendant*  
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Rapid City, SD 57709  
Telephone: (605) 342-1078  
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E-mail: katie@gpna.com

JS 44 (Rev. 04/21)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p><b>I. (a) PLAINTIFFS</b> LeRoy Deneke</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Pennington</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b>            Michael Hickey John Stanton Dorsey            Bangs McCullen Butler Foye &amp; Simmons Whiting Hagg Hagg Dorsey &amp; Hagg            PO Box 2670 PO Box 8008            Rapid City, SD 57709 Rapid City, SD 57709         </p>		<p><b>DEFENDANTS</b> Menard, Inc.</p> <p>County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)            Katelyn A. Cook            PO Box 8045            Rapid City, SD 57709         </p>	
<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>		Citizen of This State <input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	
<input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item II)</i>		Citizen of Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF Foreign Nation <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	
<b>IV. NATURE OF SUIT</b> <i>(Place an "X" in One Box Only)</i>			
<a href="#">Click here for: Nature of Suit Code Descriptions.</a>			
<b>CONTRACT</b>		<b>TORTS</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	
<b>REAL PROPERTY</b>		<b>PERSONAL PROPERTY</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	
<b>PRISONER PETITIONS</b>		<b>FORFEITURE/PENALTY</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	
		<b>LABOR</b>	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	
		<b>SOCIAL SECURITY</b>	
		<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
		<b>FEDERAL TAX SUITS</b>	
		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<b>IMMIGRATION</b>	
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	
<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i>			
<input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File			
Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ): 28 USC 1332			
<b>VI. CAUSE OF ACTION</b> Brief description of cause: Negligence			
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	
<b>VIII. RELATED CASE(S) IF ANY</b> <i>(See instructions):</i>		DEMAND \$ JUDGE _____ DOCKET NUMBER _____	
DATE 10/13/02		SIGNATURE OF ATTORNEY OF RECORD <i>B. Cook</i>	
<b>FOR OFFICE USE ONLY</b>			
RECEIPT #		AMOUNT	
APPLYING IFFP		JUDGE	
		MAG. JUDGE	